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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Petition of the California PUC for Authority to
Implement Technology-Specific Overlay
Area Codes and Request for Expedited Treatment

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CC Docket No. 99-200

CC Docket No. 96-98

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

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COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc. ("Nextel"), by its attorneys, hereby files comments in the above-captioned proceeding.¹ In late September, the California Public Utilities Commission ("CPUC") filed a petition with the Federal Communications Commission ("FCC") seeking delegated authority to implement technology-specific overlays ("TSOs") in Los Angeles and Orange County California.² The *Public Notice* seeks comment on the proposed overlays, specifically on whether they satisfy the eight criteria state commissions must address when seeking authority to implement service overlays.³ It also asks for comment on whether the public interest

¹ Wireline Competition Bureau Seeks Comment on the Petition of the California Public Utilities Commission for Authority to Implement Technology-Specific Overlay, *Public Notice*, CC Docket No. 00-200 (rel. Oct. 24, 2002) ("*Public Notice*").

² Petition of the California Public Utilities Commission and of the People of the State of California for Authority to Implement Technology-Specific Overlay Area Codes and Request for Expedited Treatment, CC Docket Nos. 99-200, 96-98 (filed Sept. 27, 2002) ("CPUC Petition").

³ See Numbering Resource Optimization, *Third Report and Order and Second Order on Reconsideration*, 17 FCC Rcd 252, 288, ¶¶ 80-81 (2001) ("*Third Report and Order*"). The specified criteria are:

- (1) the technologies or services to be included in the service overlays;
- (2) the geographic area to be covered;
- (3) whether the service overlay will be transitional;
- (4) when the service overlay will be implemented and, if a transitional service overlay is proposed, when the service overlay will become an all-services overlay;

(continued...)

would be better served by implementation of another form of area code relief, such as an all-services overlay.

As detailed herein, Nextel opposes the CPUC Petition because implementation of its technology-specific overlay will detrimentally affect wireless consumers in the subject area codes, and is not necessary in light of other, more immediate and non-discriminatory alternatives for area code relief, e.g., an all-services overlay. The CPUC proposal is in direct contravention to the Commission's stated opposition to technology-specific overlays that are geographically sensitive. Moreover, the CPUC's rationale for its overlay proposal, i.e., code exhaustion, is not a sufficient enough justification to overcome the Commission's general opposition to geographically sensitive overlays.⁴

I. INTRODUCTION

Although the CPUC chooses not to use the term "Lake-hack," its Petition proposes to "take-hack" the phone numbers of all existing non-paging wireless consumers throughout the 310 and

(continued)

(5) whether the service overlay will include take-backs;

(6) whether there will be ten-digit dialing in the service overlay and the underlying area code(s);

(7) whether the service overlay and the underlying area code(s) will be subject to rationing; and

(8) whether the service overlay will cover an area in which pooling takes place

Id.

⁴ Furthermore, the CPUC Petition and another recently filed Petition of the CPUC for Waiver of the Commission's Contamination Rule, demonstrate the CPUC's lack of regard for the federal numbering resource optimization rules and policies. Petition to the California Public Utilities Commission and the People of the State of California for Waiver of the Federal Communication Commission's Contamination Threshold Rule, CC Docket No. 99-200 (filed Sept. 5, 2002).

909 area codes. As an initial matter, although Nextel has been supportive of appropriately crafted TSOs in the past,⁶ Nextel opposes the CPUC's particular proposal because it would "take back" existing wireless numbers assigned to Nextel customers in the 310 and 909 area codes, and it would disallow forever ten-digit dialing within the areas covered by the TSO. In its place, Nextel could support an appropriately crafted TSO or all-services overlay, which could quickly resolve the numbering issues currently facing California carriers and consumers.⁷

Furthermore, the CPUC asks for a permanent waiver of the mandatory ten-digit dialing rule. Such a waiver has caused significant problems in other overlay areas and has the potential to be just as disruptive in Los Angeles and Orange County. Nextel opposes the proposed permanent seven-digit dialing scheme because not only does it further the nondiscrimination imposed on those consumers in the new overlay code, but it also can result in the call routing problems associated with seven-digit dialing that have been experienced in other overlay area code situations. Because the proposed measures are flatly inconsistent with the Commission's numbering rules and policies, and will harm both wireless carriers and their subscribers in California, the Commission should deny the CPUC Petition.

⁵ CPUC Petition at 3-4, 7-8.

⁶ See Comments of Nextel Communications, Inc., *Petition of Connecticut Department of Public Utility Control for Delegated Authority to Conduct a Transitional Service Technology Specific Overlay Trial in Connecticut*, CC Docket No. 99-200 (filed Feb. 26, 2002) (supporting Connecticut Department of Public Utility Control TSO proposal) ("Connecticut Petition Comments").

⁷ See Connecticut Petition Comments at 7-8. In these comments, Nextel outlined specific changes that it would require to support the service overlay proposed by the Connecticut Department of Public Utility Control. Specifically, Nextel stated it would support the overlay proposal if, among other things, ten-digit dialing was required, and the take-backs were not allowed at all in the opened NXXs and only allowed in unopened NXXs if NXXs in the new NPA area were provided simultaneously with the take-backs. Indeed, with the proper input from consumers and carriers, an overlay can be "crafted" to garner support from those affected by the overlay. With the support of those affected by the overlay, an overlay can go into effect more quickly and thereby expeditiously resolve the numbering exhaust challenges facing the state commissions.

II. THE “TAKE-BACK” OF 310 AND 909 NXX CODES FROM WIRELESS CUSTOMERS IS UNREASONABLY DISCRIMINATORY.

Nextel generally will not oppose technology-specific overlays, so long as such overlays are: (1) prospective in nature; (2) do not involve number take-backs from existing customers; and (3) require long-term ten-digit dialing requirements. The CPUC, however, has proposed for Commission approval an alarming overlay plan that is not supportable as it would take back all the existing wireless numbers in the 310 and 909 area codes, while at the same time would permanently allow seven-digit dialing. The CPUC’s plan would be highly disruptive to consumers and carriers. Moreover, it is a starkly discriminatory take-back of numbers from wireless carriers and their subscribers that violates well-established Commission rules and policies.

The CPUC states that its proposal is not a “take-back” because it does not require the wireless customers in the 310 and 909 NPAs “to experience a seven-digit number change.”⁸ Even though the Commission has not specifically defined a “take-back” as requiring a seven digit number change it has explained that a take-back is an action that requires certain providers to reprogram their equipment and change their customers’ phone numbers.⁹ A change to the first three digits of a customer’s phone number, *i.e.*, the area code, involves no less cost to carriers and is no less inconvenient to customers than a change to all ten digits, *i.e.*, both the area code and the seven following digits. If any one of the ten digits of a phone number changes, every affected customer will be required to have their phone reprogrammed. Moreover, those same telephone users will have to change business cards, stationary and other publications containing their phone numbers, and all persons that dial these wireless customers regularly will be required to alter their stored phone books to account for the customer’s new phone number (*i.e.*, the new area code

⁸ CPUC Petition at 7.

⁹ See *Third Report and Order*, 17 FCC Rcd at 291, ¶ 88.

change). The simple fact is: changing a wireless customer's area code *is* changing that customer's telephone number. And the Commission has made plain that number take-backs as part of a technology-specific overlay will rarely, if ever, be permitted. In fact, the Commission specifically warned that it would "likely oppose technology-specific overlays that would include take-backs of numbers that are geographically sensitive."¹⁰

The reason that the Commission so disfavors TSOs that include take-backs is because it recognizes that such take-backs result in significant cost and inconvenience to customers and their service providers: "If take-backs were imposed in the context of a wireless services technology-specific overlay . . . the costs would be particularly significant due to the large and rapidly growing number of wireless subscribers, particularly in major markets."¹¹ The Commission thus "acknowledge[s] . . . that take-backs have significant drawbacks and costs, which need to be considered in determining whether a [TSO] should include take-backs."¹²

By defining its proposed action as something other than a take-back, the CPUC has attempted to avoid the Commission's instructions to avoid discriminatory take-backs. For example, to ensure that the costs and benefits of take-backs are given careful consideration, the Commission requires state commissions proposing to use take-backs to "include a strong showing that the consumer and industry costs associated with take-backs are outweighed by the optimization benefits of the take-backs."¹³ Thus, the CPUC must demonstrate that **the** negative effects of take-backs will be mitigated by the benefits in the particular area. In particular, the CPUC must make **a** showing to the Commission that, among other things, "consumers, particularly

¹⁰ *Id.* at 292, ¶ 90.

¹¹ *Id.* at 291 ¶ 88.

¹² *Id.*

¹³ *Id.* at 292, ¶ 89.

subscribers that would be required to relinquish their telephone numbers. support the measure.”¹⁴ Indeed, according to the Commission, “[e]vidence of strong consumer support would weigh in favor of allowing take-backs, because consumers, especially wireless consumers, would be the primary group to be negatively impacted.”¹⁵

The CPUC has offered no such support for its proposal. Indeed, it has offered nothing to demonstrate that the costs associated with its numbering plan are outweighed by the benefits of its proposal, or that carriers and consumers in California favor it. The CPUC merely states it has presented its proposal to an unidentified “representation of several paging companies” as well as “representatives of several wireless carriers.”¹⁶ According to the CPUC, “it believes,” based on the carriers responses, “that we can work with the carriers to resolve implementation issues as they develop.”¹⁷ That the CPUC believes that it can “work with” other carriers is in no way an expression of support by wireless carriers for the CPUC overlay plan.

On the contrary, Nextel is not now, and has never been in favor of, this CPUC proposal. Moreover, as evidenced by a letter filed by the Cellular Telecommunications & Internet Association (“CTIA”) with the Commission, wireless carriers as an industry have expressed strong opposition to the plan.¹⁸ Nextel does not believe that *any* of its wireless customers in California many of which are businesses that may have printed their Nextel phone numbers on stationary and business cards -- would favor the take-back scheme. Rather, it would create significant disruptions

¹⁴ *Id.*

¹⁵ *Id.* at 292 n.218

¹⁶ CPUC Petition at 3

¹⁷ *Id.*

¹⁸ Letter to Mr. William Maher, Chief of the Wireline Competition Bureau and Mr. Thomas Sugrue, Chief of the wireless Telecommunications Bureau, from Mr. Michael Altschul, Senior Vice President for Policy and Administration and General Counsel for the Cellular Telecommunications & Internet Association (Oct. 2, 2002) (“CTIA Letter”)

to Nextel's subscribers and cause unnecessary client dissatisfaction. As CTIA correctly recognizes, the "CPUC proposal, as currently stated, discriminates against wireless providers, and will result in substantial customer confusion and inconvenience due to the massive 'take-back' of wireless numbers that will occur if the plan is implemented."¹⁹ Finally, the CPUC Petition fails to address how a technology-specific overlay can or should be maintained following the implementation of wireless number portability, which is now set to begin on November 24, 2003.

III. THE CPUC'S REQUEST FOR A PERMANENT WAIVER FROM THE TEN-DIGIT DIALING REQUIREMENT MUST BE DENIED.

The CPUC seeks authority from the Commission to implement a permanent seven-digit dialing requirement in both the TSO NPAs and the underlying NPAs. This would require a permanent waiver of the Commission's ten-digit dialing requirement." Although the Commission stated that it would temporarily grant waivers of the requirement that ten-digit dialing be implemented in both the service overlay NPA and the underlying NPA, it also stated that "it is not likely that requests for permanent waiver of the ten-digit dialing requirement ... will be granted."

The Commission further observed that "[m]andatory ten-digit dialing, we believe, minimizes anti-competitive effects due to dialing disparities, which, in turn, avoids customer confusion."²²

Beyond the real potential for customer confusion, in Nextel's experience, the waiver of ten-digit dialing can result in real and unsolvable call routing problems. Already, in New York City, Nextel customers and landline customers have been adversely affected by the waiver of ten-digit dialing. Specifically, because of the waiver, the landline network has misrouted certain calls

¹⁹ *Id.* at 3.

²⁰ 47 C.F.R. § 52.19(c)(3)(ii) ("No area code overlay may be implemented unless there exists, at the time of implementation, mandatory ten-digit dialing for every telephone call within and between all area codes in the geographic area covered by the overlay area code.").

²¹ *Third Report and Order*, 17 FCC Rcd at 293, ¶ 92.

²² *Id.*

intended for Nextel subscribers. This occurs because in New York City, there are active NXXs (in the underlying, preexisting area code) that are identical to the overlay NPAs. Because there is no ten digit dialing requirement, the landline network is not upgraded to distinguish between seven and ten-digit calls, and will, therefore, route on the first seven digits rather than waiting for the full ten digits.²³ As a result, calls are misrouted, calls cannot be properly completed, and wireless carriers, while often blamed by consumers as the source of the misrouting problem, are powerless to fix it.

The CPUC states that the benefit of seven-digit dialing is that TSO customers can reach a larger geographic area with seven-digit dialing.²⁴ Taking the example provided at face value, all the CPUC is stating is that once all wireless customers are removed to the new TSO NPA, a wireless customer will only have to dial seven digits to reach another wireless customer also on the TSO NPA. This benefit is weak when compared to the potential for major customer misrouting problems. Dialing three extra digits is simple when compared with dealing with the misrouting of calls, which is an unsolvable problem so long as there remains seven-digit dialing anywhere in the new TSO NPAs or the underlying NPAs. Furthermore, most wireless customers use their phones by accessing pre-programmed numbers in their "Phone Book." Once a phone number with an area code is programmed into a wireless phone, it does not make a difference if a wireless caller must dial the area code or not. Therefore, Nextel submits that no cost benefit analysis would or should

²³ For example, in New York City, ILEC customers within NPA 71X who are dialing ten digits to reach Nextel customers in the (646) 261-6XXX and (646) 261-7XXX number ranges instead are routed after the first seven digits are dialed to ILEC customers at (718) 646-2616 and (718) 646-2617. These problems have received both Commission and Congressional attention, but remain unresolved.

²⁴ CPUC Petition at 12 ("[C]urrently, a customer in Malibu in the 310 NPA would dial 1+213-NXX-XXXX to reach a customer in downtown Los Angeles. With the 310 SO covering both 310 and 213 NPAs, the 310 SO customer in Malibu would no longer need to dial one + ten digits to reach another 310 SO customer in downtown Los Angeles."). The other benefits listed by the CPUC for seven-digit dialing are the extension of the lives of the 310 and 909 area codes. CPUC Petition at 11-12. However, the extension of the 310 and 909 NPAs is irrelevant to the issue of seven-digit dialing.

support an unacceptable feature such as the misrouting of calls that currently happens in New York City.²⁵

Because of these demonstrated problems with seven-digit dialing waivers in other markets, the Commission should not grant the CPUC a permanent waiver for mandatory ten-digit dialing. If, despite the foregoing, there is to be a waiver of the ten-digit dialing requirement, Nextel asks the Commission to require that no new NXXs be opened in NPAs 310, 323, 213, 562, 909, 714 and 949 that are the same as these NPAs, and that the waiver be for as short a period as possible, as was the case in New York City. Failure to take these steps will result in serious problems, such as the misrouting of calls described above.

²⁵ The FCC recently allowed seven-digit dialing in New York City's overlays to continue **due** to the difficulty of transitioning to ten-digit dialing at the same time the city was addressing the extensive infrastructure damage (including telecommunications damage) as a result of the September 11, 2001, terrorist attack on the World Trade Center. Even under the circumstances in New York City, the FCC only allowed seven-digit dialing to continue **for** eight months instead of the 14 months requested by the New York Public Service Commission. Joint Submission of the New York State Public Service Commission, the New York State Consumer Protection Board and the City of New York for an Expedited Temporary Waiver of 47 C.F.R. § 52.19(c)(3)(ii), *Order*, 17 FCC Rcd 1 (2001). No such extraordinary circumstance exists in California for a waiver, particularly for a permanent waiver.

IV. CONCLUSION

The Commission must act to prevent the CPUC from overtly discriminating against wireless carriers. Implementing a TSO that imposes take-backs in the 310 and 909 area codes will force substantial dislocations on both wireless carriers and customers in these areas as well as require wireless carrier to expend significant resources for reprogramming. Furthermore, allowing a permanent waiver of the ten-digit dialing requirement has the potential to cause significant and completely avoidable -- routing problems within the landline telephone network that in no way benefits consumers. **As** such, Nextel, urges the Commission to act expeditiously to deny the CPUC Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Colleen **A.** Mulholland, a legal secretary at Drinker Biddle & Reath LLP, do hereby certify that on this 25th day of November, 2002, a copy of the foregoing "COMMENTS," was sent by first class, United States mail, postage prepaid, unless otherwise indicated, to each of the following:

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